

REMARKS

This responds to the Office Action mailed on July 2, 2004.

No claims have been amended; as a result, claims 26-47 are now pending in this application.

§103 Rejection of the Claims

The Examiner has rejected claims 26-47 under 35 USC § 103(a) as being unpatentable over Wiser et al. in view of Paget. The Applicant respectfully requests reconsideration and withdrawal of this ground of rejection for the reasons set forth.

The key claimed herein is a physical, hardware object, and not merely software, as is the case with the Wiser key. Furthermore, the key of the claimed invention, the physical, hardware object, not only authenticates the user but also authenticates the content the user wishes to access. The user is authenticated when the user acquires a physical key containing a unique key code from a key provider, as is claimed in claim 26. The content is authenticated when the locked digital content is entered into a playing device that reads the key code and determines whether the key code is associated with the unlock code, the device being enabled to unlock code, and play the digital content if the key code is associated with the unlock code, as described in claim 26.

The Wiser software requires a use of passwords or passphrases and displays private information such as credit card numbers. The claimed invention does not require a use of passwords or passphrases but utilizes instead, “a physical key containing a unique key code from a key provider,” as is claimed in claim 26. The physical key is also described in claim 26 as “being a physical object adapted to be carried by the user apart from the playing device.” Claim 27 describes the key as a, “physical key *that* includes providing the key provider with user identification information for use by the key provider establishing a user account, the user account including the user identification information and the key code.”

The invention claimed herein employs a physical key and does not require or rely upon elements such as passwords and passphrases. Because Wiser relies upon software, the Wiser key is dependent upon passwords and passphrases and is vulnerable to being copied by unauthorized users.

BEST AVAILABLE COPY

The Paget article describes a use of PKI technology, in one form, incorporated into a smart card, in securing transactions over an extranet or over the Internet. There is no suggestion in the Paget reference, that PKI technology could be used to actually secure content on a medium such as a CD, software package, DVD, or other similar medium. There is no suggestion that the PKI and smart card technology of Paget could “enter the locked digital content into a playing device that reads the key code and determines whether the key code is associated with the unlock code, the device being enabled to unlock code, and play the digital content if the key code is associated with the unlock code,” as is claimed.

The PKI is described in the Paget reference as authenticating “the certificate holder.” However, there is no reference to the PKI authenticating the content itself. Thus, the Paget reference does not describe a smart card that can unlock or lock a device playing a CD or DVD. There is no description anywhere in Paget or Wiser of how a smart card can be used to authenticate a user and render content accessible.

Furthermore, the smart card of Paget requires another piece of equipment, a card reader, to “activate.” The claimed invention does not require additional equipment. With the claimed invention, the user need only position the physical key proximal to a device such as a CD player. The smart card of Paget does not have this capability. Positioning the smart card of Paget proximal to a CD player will not activate the CD player.

Combining the references does not render the invention claimed herein obvious because even if the references are combined, there is no suggestion that a physical hardware object, as is claimed, could be used to authenticate content “when the locked digital content is entered into a playing device that reads the key code and determines whether the key code is associated with the unlock code, the device being enabled to unlock code, and play the digital content if the key code is associated with the unlock code,” as is claimed. Neither reference describes these claimed features.

The physical key of the invention claimed herein imparts to users an ability to lock or unlock content merely by being carried by the user, as described in claim 26, which is very different from what is described in the references cited by the Examiner. The Wiser and Paget references require users to enter passwords, type passphrases, and swipe smart cards over card

BEST AVAILABLE COPY

readers. The claimed invention utilizes content protection capabilities without requiring taking these active steps entering passwords and swiping smart cards in card readers. The claimed invention provides users with a system where content is easily accessible to them without thought or effort and without being accessible to others.

BEST AVAILABLE COPY

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JOHN GIOBBI

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6976

Date 2 September 04

By J. M. Kalis
Janal M. Kalis
Reg. No. 37,650

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop RCE, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2nd day of September, 2004.

Dawn M. Poole

Name

Dawn M. Poole

Signature

BEST AVAILABLE COPY